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नई दिल्ली, शनिवार, जून 5, 1993/ज्याइस्था 15, 1915

No. 20]

NEW DELHI, SATURDAY, JUNE 5, 1993/JYAISTHA 15, 1915

इस खण्ड में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासन को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 7 मई, 1993

Commission hereby publishes the order of the High Court
of Madhya Pradesh, Indore Bench, Indore dated 18th Decem-
ber, 1992 in Election Petition No. 2 of 1991.

[No. 82/MP-HP/2/91/93]

By Order,

GHANSHYAM KHOHAR, Secy.

ELECTION PETITION NO. 2/91

Subhash Chandra Vs. Rameshwar Patidar

ORDER

By this election petition under sec. 81 of the Representa-
tion of People Act, 1951 (for short 'the Act'), the petitioner,
who is an elector and also a candidate having lost calls in
question the election of the respondent on 17-6-91, in Gene-
ral Electio to the Lok Sabha, from Khargone Constituency
No. 6/93 and 7/92 dated 9-7-1992 under section 86 read
in paragraph 6 running into numerous sub-paras of the
petition.

2. The respondent by application I.A. No. 16/91 dated
7-12-91, I.A. No. 3/92 dated 27-6-92 and applications I.A.
No. 6/93 and 7/92 dated 9-7-1992 under section 86 read
with section 81, 83 of the Act and under Or. 7 r. 11
and sec. 151 C.P.C., raised preliminary objections as regards

ELECTION COMMISSION OF INDIA

New Delhi, the 7th May, 1993

O.N. 91.—In pursuance of section 106 of the Repre-
sentation of the People Act, 1951 (43 of 1951) the Election

maintainability of the election petition and prayed for its dismissal with costs.

3. The petitioner by his replies filed on 6-3-92 and 10-7-92 to the aforesaid applications has contested and controverted the allegations made by the respondent and prayed for dismissal of these applications.

4. The following preliminary objections to the maintainability of the election petition are raised and have been argued by the parties.

(1) The affidavit as sworn and filed by the petitioner along with the petition is not in accordance with section 83 of the Act and rule 94-A of Rules and prescribed form 25 of the Conduct of Election Rules 1961 (for short the Rules).

(2) The verification is not in accordance with Rule 9 of the Election Petition Rules as framed by this Court it contravenes rules 4, 5, 7 and 15 of the High Court Rules and orders.

(3) The copy of the petition as served and supplied to the respondent in view of the certain omissions therein, cannot be said to be a 'true copy' within the meaning of section 81(3) of the Act.

Consequently, the petition is liable to a summary dismissal.

5. Before proceeding further to deal with the aforesaid preliminary objections, it may be noted at this stage, that Shri Maheshwari, who had also raised a preliminary objection as regarding attestation of affidavit by Oath Commissioner and presentation of the petition before Additional Registrar of this court, abandoned the same, vide order sheet dated 10-7-1992. Learned counsel also placed on record copy of the petition as served on the respondent.

6. Since respondent's main attack is on the verification of the petition, it would be worthwhile to reproduce the same for ready reference :

"VERIFICATION"

I, Subhash Chandra S/o Shri Gangaram Yadav, do hereby verify that the contents in paragraphs No. 1, 2, 3, 5, 6-I-A (1), (2), (3), (4), (5), I-B(1), (2), (4)(II) (1), (2), (5), (6), (7), (8) 11 and 12 are true to my personal knowledge and that the contended in paragraphs 4(a), (b), (c), (d), 6(1), (2), (3), 9, 10 and 13 are true to my information received by me which I believe to be true.

Verified this the 29th day of July, 1991 at Jabalpur.

Sd/-
Petitioner

The petitioner has verified statements as made in para 6-I-A at page 13 of the petition para 1, 2, 3, 4, 5 (at pages 13, 14 and 15 of the petition and 6-I-B paras 1, 3, 4 and 4 at page 16 of the petition, paras 5, 6 and 7 at page 17 of the petition and paras 6-II pertaining to false statement of facts calculated to prejudice the election prospects of the petitioner in sub para (1) and (2) at page 17 and 18 of the petition, as true to his personal knowledge. There very statements relating to corrupt practice, given in paragraph 6 1A (1), (2), (3), (4), (5), B-(1), (2), (3), (4), (5), (6) and (7) and 6 1A (1) and 02 have been verified in the affidavit sworn by the petitioner as true to his information.

7. At one stage the averments have been verified as true to personal knowledge while the same averment relating to corrupt practice have been verified as true on petitioner's information. In the affidavit sworn in support of the corrupt practice as alleged in the petition, there is an apparent inconsistency.

8. Shri Maheshwari also pointed out an apparent omission in the verification appended to the affidavit that averments made in paras 6 II (1) and (2) (at page 17 and 18 of the petition) and paras 6(1) (2) and (3) (at page 11 and 12 of the petition) have not at all been verified.

9. The legal requirement in his behalf is not in dispute, as is evident from the petitioner's reply filed on 6-3-92.

10. It is an admitted position that the proviso to sub-section (1) of sec. 83 of the Act, lays down that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice. Rule 94-A of the Rules says that the affidavit referred to in proviso to sub-section (1) of section 83 of the Act, shall be in form 25.

11. The factual and legal position being clear, what is contended by Shri Mathur, senior Advocate appearing for the petitioner is that Sec. 83(1) of the Act and rule 94A and form 25 have been complied with.

12. Section 83 of the Act deals with contents of the petition. The proviso to clause (a) of sub-sec. (1) of Section 83 of the Act clearly provides that where the petitioner alleges corrupt practices the petition shall also be accompanied by an affidavit in support of the allegations of such corrupt practice and the particulars thereof. Rule 94-A of the Election Rules, 1961 prescribes Form 25 for swearing such affidavit.

13. It is no longer *Res integra* that such affidavit in support of allegations of corrupt practice forms an integral part of the petition itself.

14. A Division Bench of this court in Gangaram Bandil Vs. Rashmi Parihar (A.I.R. 1987 H.C. 208) has following M. Karunanidhi Vs. H. V. Handa (A.I.R. 1983 S.C. 585) and M. Kamlam Vs. Dr. V. A. Said Mohd. (AIR 1978 S.C. 840) has categorically held that such an affidavit in support of allegations of corrupt practice forms an integral part of the election petition.

15. Shri Mathur senior Advocate appearing for the petitioner has urged that the rules of procedure should not be so stretched applied as to defect the cause of justice. Placing reliance upon the following decisions *Ma. Shive vs. Maung MO* (A.I.R. 1922 P.C. 249), *Raja Inderjeet vs. Amarsingh* (A.I.R. 1923 P.C. 135), *Owners and Parties vs. Fernando Lopez* (A.I.R. 1989 S.C. 2206), *Ganesh Tradaing Co. vs. Mojiram* (A.I.R. 1978 S.C. 484) and *Rajnarain vs. Smt. Indira Gandhi* (AIR 1972 S.C. 1302) it was strenuously urged by the learned counsel that rules of procedure is a hand maid and mistress of justice. As a general statement there can be no dispute with it, but it cannot be made a matter of universal application. A well grounded generalisation may be of some help but not a sweeping generalisation embracing a greater number and variety of unfounded inferences based on false analogies. Shri Mathur has employed an argument with some correctness indeed, but over rating its probative force. Except for the case of *Smt. Indira Gandhi* (AIR 1972 SC 1302) the other cases relied upon do not even relate to election matters. They deal with such questions as allowing an amendment on admitting additional evidence under Or. 41 r. 27, C.P.C. On the requirement of signature of a witness on his statement recorded on commission as required by rule 4 of Chapter XXII of the High Court Rules, framed by the Calcutta High Court, even in *Smt. Indira Gandhi's* case (*supra*) what the question before the Supreme Court was one of pleadings. It was in this context that the Supreme Court observed rules of pleadings are intended as aids for fair trial for reaching a just decision.

16. What we are concerned with at the moment is the statutory requirement of an affidavit under Sec. 83 of the Act. It is neither a question of construction of pleadings nor a question of admitting additional evidence or allowing an amendment in all such matters a liberal approach has been recommended but it cannot be applied out of context. The object and the purpose of the requirement of law should never be lost sight of. The fallacy of Shri Mathur's argument can be demonstrated by taking for instance, a case of preventive detention, wherein the rules of procedure not only play a dominant role, but also of utmost importance.

17. The Supreme Court in *F. A. Sapa etc. vs. Singora and ors.* (AIR 1991 SC 1557), which Shri Mathur has also referred to and relied upon, has observed as follows :

"It is fairly well settled that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character it is essential that it must conform to the requirements of our election law."

In view of the foregoing discussion the liberality of approach in matters of requirements of verification of petition and affidavit in support of corrupt practice as canvassed by Shri Mathur cannot be accepted.

18. Apart from the above defects and discrepancies in the verifications to both the petition as well as the affidavit sworn by the petitioner in support of corrupt practice there are certain additions and alterations made in the petition as filed, but the same do not find place in the copy as served and supplied to the respondent.—

"In para 6(A)(2) at page 13, the words 'in the presence of and' added by the petitioner do not find place in the relevant para of the copy. Similarly, the words 'entire speech was' in the same para do not find place in the relevant para of the copy of the petition. Similarly, the words 'more particularly some parts of the added by the petitioner in this para of the petition do not find place in the relevant para of the copy of the petition served upon the respondent.'"

It was, therefore, contended by Shri Maheshwari that the copy of the petition as served on the respondent cannot be said to be a true copy of the petition, which is liable to be dismissed under sec. 86 of the Act, for non-compliance of sub-sec. (3) of Sec. 81 of the Act, which is mandatory.

19. The importance of verification of an affidavit is to test the genuineness and authenticity of allegations and also to make the deponent responsible for such allegations, as held by the Supreme Court in *A.K.K. Nambiar vs. Union of India* (AIR 1970 SC 652). In *Virendra Kumar Sakhecha vs. Jagjivan* (AIR 1974 S.C. 1957) the affidavit alongwith the election petition, which did not disclose the source of information in respect of the speech alleged to have made by the appellant, came up for consideration before the Supreme Court, vis-a-vis the Rules framed by this Court alongwith form 25, and rule 94-A of the Election rules,

20. Shri Mathur, placing reliance on a decision of the Supreme Court in *Ziauddin Bhukari vs. Brijmohan* (AIR 1975 SC 1788) contended and rightly so that petition can only be dismissed for a substantial defect. But in the same case as has been noted by the Court, in para 7 of the judgment, there was no defect at all in the form of the affidavit and the relevant issue was deemed to have been given up which is not the position obtaining in the case at hand.

21. In *Prabhu Narayan vs. A. K. Shrivastava* (AIR 1975 SC 968) the only charge made in the petition was the charge of publication of the pamphlets and not their printing—dealing with this question the Supreme Court held as under :

"It is obvious that when sec. 123(4) speaks of publication it means distribution. Mere printing of the pamphlet would not fall under sec. 123(4). Therefore the failure to give particulars of the printing cannot lead to the dismissal of the petition. Nor could evidence regarding it be shut out. The proviso to sec. 83(1) lays down that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It does not say that the allegation

of corrupt practice and particular thereof should be given in the affidavit. The election petition contains the allegation of corrupt practice and particulars thereof. That this is the intention of the legislature is also clear from perusal of form 25, which is the one prescribed under rule 94-A of the Conduct of Elections Rules. The affidavit filed in support of the election petition is in accordance with the form."

Referring to *Virendra Kumar Sakhecha's* case the Supreme Court proceeded to observe as under :

"However, in that case a failure to conclusion to rule 9 and rule 7 of the M.P. High Court rules was not held to be fatal to the election petition. What was said was that it would be helpful in assessing the value of the evidence. But that purpose is served by the allegations in the election petition itself. Moreover, it appears to us that the provisions of rule 9 of the M.P. High Court rules regarding the election petitions framed by the M.P. High Court by reference to rule 7 of the M.P. High Court rules found in Chapter III regarding affidavits cannot be made use of for this purpose. The former set of rules are made under Art. 225 of the Constitution and cannot make any substantive law and the rules themselves on a perusal of them would show that they relate merely to procedural matters unlike rules made under Sec. 122 of the Code of Civil Procedure."

Sapa's case (supra) relied upon by the petitioner has also held that Sakhecha's case is not an authority for the proposition that failure to disclose the source on ground of information would result in dismissal of the petition under Sec. 86(1) of the Act.

22. Shri Maheshwari, however, submitted that he has also relied upon the case to show the mandatory nature of the Rules framed by this court.

23. As has been pointed out by the Supreme Court after resume of the case law in Sapa's case (supra) it will have to be decided by the court in each individual case whether the defect in the affidavit case is curable or fatal :

From the text of the relevant provisions of the R.P. Act, Rule 94-A and Form 25 as well as Or. 6, Rule 15 and Order 19, Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any can be cured, (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true, (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed form 25 can be cured unless the affidavit forms an integral part of the petition in which case the defect concerning material facts will have to be dealt with, subject to limitation under sec. 81(3) as indicated earlier. Similarly the court would have to decide in each individual case whether the schedule or annexure referred to in sec. 83(2), constitutes an integral part of the election petition or not, different considerations will follow in the case of the former as compared to those in the case of the latter."

Further the Supreme Court has held—

"Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to

doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure form an integral part of the election petition itself, strict compliance would be insisted upon."

It is in this light that the affidavit as sworn and filed by the petitioner is required to be judge.

24. Defects in affidavit have already been noted above. They are not mere defects of form. They are of a substantial nature and cannot be cured. Shri Mathur's argument that the photostat copy of the petition as retained by the petitioner, bears the additions and alterations as made before filing of the petition is too nive to be accepted. The question is about copy as served on the respondent. Too, apparently it does not bear such additions or alterations. These additions and alterations are not of a formal or insignificant nature when read as a whole in their proper context, they change the whole tenor and purpose of the averments.

25. Similarly the defects and omissions in verification as noted above in the affidavit can also not be lightly brushed aside. They are simply irreconcilable. A fact, rather basketful of facts stated to be true on personal knowledge of the petitioner, at one stage in the verification of the petition, stating the same facts as true on information, that took without disclosing the source thereof, in the verification to the affidavit sworn in support of corrupt practice, is highly incongruent.

26. In Mithilesh Kumar Pandey Vs. Baidyanath Yadav and ors. (AIR 1984 SC 305)—mistakes in copy of the petition supplied to elected candidate as regards names of per-

sons through whom corrupt practices were alleged to have been committed by him and mistakes relating to omission of some names giving wrong names were held to be fatal and petition liable to be dismissed in limine.

27. Similarly in Rajendrasingh vs. Smt. Usha Rani and ors. (AIR 1984 SC 956) it has been held that if an election petitioner disregards the mandate contained in sec. 91(3) of the Act by filing incorrect copies, he takes the risk of the petition being dismissed in limine under sec. 86 of the Act. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of provisions of sec. 81(3) of the Act which is sufficient to entail a dismissal of the election petition.

28. In the instant case firstly affidavit as sworn by the petitioner in support of the allegations of corrupt practice which an integral part of the petition and having not been supplied to the respondent in its true form, contravenes sec. 81(3) of the Act and renders the petition liable to summary dismissal.

29. In view of the foregoing discussion the objections as raised by the respondent deserve to be upheld. They are accordingly upheld. There is noncompliance of provisions of sec. 81(3) of the Act, which is fully established. The petition and the affidavit as served on the respondent, do not fulfil the requirements of law. The petition deserves to be dismissed and is accordingly dismissed with costs. Counsel fee Rs. 2500, if certified.

Sd/- V. D. GYANI, Judge
18-12-92.

SCHEDULE OF COSTS

Particulars	Appellant	Respondent
	Applicant	Non-Applicant
	Rs. nP.	Rs. nP.
Court-fee on memo of Appeal and Application	7.50	14.00
Court fee on power of attorney	5.00	10.00
Court fee on exhibits
Court fee on process	4.50	..
Counsel's fee on Re.	Certificate not filed	
Fee for preparation of		
Paper Book		
Total :—	17.00	24.00